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## UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

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10 UNITED STATES OF AMERICA, } 2:08-cr-161-PMP-GWF  
11 vs. } GOVERNMENT'S MOTION FOR ORDER  
12 CASEY LUCZAK, } WAIVING ATTORNEY CLIENT  
13 DEFENDANT. } PRIVILEGE TO ADDRESS  
14 ALLEGATIONS IN DEFENDANT'S 28  
15 U.S.C. § 2255 MOTION AND ORDERING  
16 LUCZAK'S FORMER COUNSEL TO  
17 PROVIDE INFORMATION

18 COMES NOW, the United States of America by and through its attorneys,  
19 DANIEL G. BOGDEN, United States Attorney, and ADAM M. FLAKE, Assistant United States  
20 Attorney, and respectfully requests this Court enter an order waiving the attorney-client  
21 privilege in this case and ordering Defendant's former attorney, David Farnham, to provide  
22 the Government with the information requested in this motion.

23 This order is sought for the following reasons:

24 1. Defendant has filed a 28 U.S.C. § 2255 motion to vacate, set aside or  
25 correct sentence by a person in federal custody, alleging ineffective assistance of counsel.

26 2. Information from Defendant's former attorney, David Farnham, is necessary  
27 in order to respond to Defendant's allegations.

28 3. The Government requests this Court's order that the attorney-client privilege  
29 is waived as to all contentions raised in Defendant's 28 U.S.C. § 2255 motion, that David

1 Farnham, provide an affidavit responding to Defendant's allegations within 30 days of the date  
2 of this order.

3                   4. The voluntary disclosure by a defendant of privileged attorney  
4 communications “constitutes waiver of the privilege as to all other such communications on  
5 the same subject.” *Weil v. Investment/Indicators, Research & Management*, 647 F.2d 18, 24  
6 (9th Cir. 1981); see also *United States v. Zolin*, 809 F.2d 1411, 1415-16 (9th Cir. 1987); *Clady*  
7 *v. County of Los Angeles*, 770 F.2d, 1421, 1433 (9th Cir. 1985).

Even when a party does not explicitly disclose the content of an attorney-client communication, he may waive the privilege implicitly. A person cannot always claim that he relied on counsel, while protecting what was said between them from disclosure. As we have said: "The privilege which protects attorney-client communications may not be used both as a sword and a shield. Where a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived." (Citations omitted.)

<sup>14</sup> *United States v. Ortland*, 109 F.3d 539, 543 (9th Cir. 1997).

21 | DATED this 9th day of March 2012.

Respectfully submitted,

DANIEL G. BOGDEN  
United States Attorney

/s/ Adam M. Flake  
ADAM M. FLAKE  
Assistant United States Attorney

## 1 UNITED STATES DISTRICT COURT

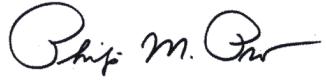
## 2 DISTRICT OF NEVADA

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4 UNITED STATES OF AMERICA, ) 2:08-cr-161-PMP-GWF  
5 Plaintiff, )  
6 vs. )  
7 CASEY LUCZAK, ) ORDER WAIVING ATTORNEY CLIENT  
8 Defendant. ) PRIVILEGE TO ADDRESS  
 ) ALLEGATIONS IN DEFENDANT'S 28  
 ) U.S.C. § 2255 MOTION AND ORDERING  
 ) DEFENDANT'S FORMER COUNSEL TO  
 ) PROVIDE INFORMATION

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11  
12 Based on the pending application of the Government, and good cause appearing,  
13 **IT IS THEREFORE ORDERED** that the attorney-client privilege in case No. 2:08-cr-  
14 161-PMP-GWF is waived with respect to the allegations in Defendant's 28 U.S.C. § 2255  
15 motion, and that David Farnham shall provide the Government with an affidavit addressing  
16 the allegations of ineffective assistance in Defendant's 28 U.S.C. § 2255 motion no later than  
17 30 days from the date of this order.

18 **DATED:** this 28th day of March, 2012.

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21 UNITED STATES DISTRICT JUDGE

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the United States Attorney's Office, and is a person of such age and discretion as to be competent to serve papers.

That on March 9, 2012, she filed a copy of **GOVERNMENT'S MOTION FOR ORDER WAIVING ATTORNEY CLIENT PRIVILEGE TO ADDRESS ALLEGATIONS IN DEFENDANT'S 28 U.S.C. § 2255 MOTION AND ORDERING LUCZAK'S FORMER COUNSEL TO PROVIDE INFORMATION**, by electronic mail and by U.S. Mail to the following:

**Casey Luczak**  
42940-048  
HAZELTON  
U.S. PENITENTIARY  
Inmate Mail/Parcels  
P.O. Box 2000  
Bruceton Mills, WV 26525

/s/ Terrie Murray

# TERRIE MURRAY

## Legal Assistant